

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Christian Television Corporation, Inc.)	
)	CSR-6128-M
v.)	
)	
Mallard Cablevision, L.L.C.)	
)	
Request for Mandatory Carriage of)	
Television Station WCLF-TV, Clearwater, Florida)	

MEMORANDUM OPINION AND ORDER

Adopted: July 31, 2002

Released: August 4, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Christian Television Network, Inc. (“CTN”), licensee of television broadcast station WCLF-TV, Clearwater, Florida (“WCLF” or the “Station”) filed the above-captioned must carry complaint against Mallard Cablevision, L.L.C. (“Mallard”) for failing to carry WCLF on its Holliday Heights, Florida cable system.¹ In its complaint, CTN also asks the Commission to order Mallard to resume carriage of WCLF on its Ozello and Oak Forest, Florida systems.² Mallard filed an Opposition to this complaint, to which CTN replied.

II. BACKGROUND

Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues (“Must Carry Order”)*, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market.³ A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.⁴ A DMA is a geographic market designation that defines each television market exclusive of

¹ Complaint at 1.

² *Id.*

³ 8 FCC Rcd 2965, 2976-2977 (1993).

⁴ Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. §

others, based on measured viewing patterns.

2. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.⁵ One method of doing so is for a cable operator to establish that a subject television signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.⁶ Should a station fail to provide the required over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under the Commission's rules a television station may provide a cable operator, at the station's expense, with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.⁷

III. DISCUSSION

3. The first issue is whether or not Mallard should be ordered to resume carriage of WCLF at its Ozello and Oak Forest, Florida headends. WCLF asserts that on August 23, 2002, it notified Mallard of its mandatory carriage election on Mallard's cable systems serving the Tampa-St. Petersburg-Sarasota DMA.⁸ WCLF states that on or around January 1, 2003, Mallard commenced carriage of WCLF on its Ozello and Oak Forest systems, but that on February 11, 2003, Mallard notified the Station that effective April 1, 2003, Mallard would no longer carry WCLF on its channel line-up because Mallard was unable to obtain an acceptable signal from WCLF.⁹ WCLF asserts on February 18 and 26, 2003 it asked Mallard to conduct signal strength tests at the Ozello and Oak Forest's principal headends, but that Mallard did not respond.¹⁰ WCLF maintains that Mallard must demonstrate that the Station's signal quality is inadequate at both principal headends before it is justified in discontinuing carriage.¹¹

4. In its Opposition, Mallard maintains that it was justified in discontinuing the carriage of WCLF because the Station does not deliver a good quality signal to the Ozello and Oak Forest principal headends. Mallard asserts that it received numerous customer complaints and service calls regarding WCLF's inadequate signal quality.¹² Mallard contends that WCLF does not provide a good quality signal to its Ozello and Oak Forest principal headends because of the distance between WCLF's transmitter and Mallard's principal headends.¹³ Mallard asserts that it discussed the Station's poor signal quality with WCLF before WCLF's August 23, 2003 must carry request, but WCLF made no attempt to remedy the

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534(h)(1)(C). Section 76.55(e) of the Commission's rules requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e).

⁵ See *Must Carry Order*, 8 FCC Rcd at 2990.

⁶ 47 C.F.R. § 76.55(c)(3).

⁷ *Must Carry Order*, 8 FCC Rcd at 2991.

⁸ Complaint at 2.

⁹ *Id.*

¹⁰ *Id.* and Exhibit E.

¹¹ *Id.* at 3.

¹² Opposition at 2.

¹³ *Id.* at 1-3.

situation.¹⁴ Mallard argues that the tests it conducted subsequently on February 20, 2003, with readings of -5.6 dBmV (-54.35dBm) at the Oak Forest headend and -40 dBmV (-88.75dBm) at the Ozello principal headend, show that WCLF's signal was below the required threshold for mandatory carriage, and therefore, the Station was not entitled to must carry status.¹⁵

5. In reply, WCLF argues that Mallard's February 20, 2003 signal strength measurements are not valid and cannot be used to show that the Station's signal was inadequate at the Ozello and Oak Forest headends.¹⁶ WCLF contends that Mallard did not comply with Commission's rules which require a cable operator to conduct further signal strength testing when the readings it obtains are below -51dBm for a UHF signal, as shown by the February 20th tests, and maintains that Mallard failed to use good engineering practices when the February 20th testing was conducted.¹⁷ WCLF maintains that Mallard has not met its burden of demonstrating that the Station's signal is inadequate for mandatory carriage and, therefore, Mallard should resume carriage of the Station on its Ozello and Oak Forest cable systems.¹⁸ In addition, WCLF contends that subscriber complaints and service calls do not justify Mallard's termination of carriage in Ozello and Oak Forest.¹⁹

6. Commercial television broadcast stations, such as WCLF, are entitled to carriage on cable systems located in the same DMA. Cable operators, on the other hand, have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.²⁰ One method of doing so is for a cable operator to establish that a subject television station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.²¹ In this case, Mallard's justification for dropping WCLF on April 1, 2003 for technical reasons is not supported by the necessary empirical evidence. A review of the engineering data relied upon by Mallard shows that it was not conducted using good engineering practices. In this regard, to determine whether a certain level of signal is present, it is necessary to submit a series of measurements, not just one for each headend location as submitted by Mallard. Generally, if the test results are less than -55 dBm for a VHF station, we believe that at least 4 readings over a 2-hour period should be taken. Also, signal strength surveys should, at a minimum, include specific make and model numbers of the equipment used, as well as its age and most recent date(s) of calibration; description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; height of the antenna above ground level and whether the antenna was properly oriented; and weather conditions and time of day when the tests were conducted. In this case, Mallard did not comply with any of these requirements. Furthermore, consumer telephone calls and complaints about service, although an indication that a signal quality problem may exist, are not sufficient to drop a station otherwise entitled to mandatory carriage without further technical studies. Thus, Mallard has failed to meet its burden. Because Mallard has failed to establish WCLF's inability to provide a good quality signal to these two systems principal headends, we will grant this part of the Station's complaint and order Mallard to resume carriage of WCLF on its Ozello

¹⁴ *Id.* at 4.

¹⁵ *Id.* at Exhibit A.

¹⁶ Reply at 2.

¹⁷ *Id.*

¹⁸ *Id.* at 2-4.

¹⁹ *Id.* at 4-5.

²⁰ See *Must Carry Order*, 8 FCC Rcd at 2990.

²¹ See 47 C.F.R. § 76.55(c)(3).

and Oak Forest cable systems.

7. The second issue in this proceeding is whether or not WCLF qualifies for mandatory carriage on Mallard's Holiday Heights cable system. In this regard, WCFL states that it was only after it received Mallard's notification that it would no longer carry the Station on the Ozello and Oak Forest systems that WCLF realized that Mallard was not carrying its signal on its Holiday Heights system.²² WCLF asserts that although it qualifies for mandatory carriage on Mallard's Holiday Heights cable system, Mallard has provided no justification for its refusal to carry the Station on that system.²³ In support, WCLF states that it is licensed to Clearwater, Florida, which is in the Tampa-St. Petersburg-Sarasota, Florida DMA.²⁴ It states further that Mallard's Holiday Heights cable television system is also located in the Tampa-St. Petersburg-Sarasota DMA.²⁵ WCLF contends that because it is located within the same DMA as Mallard's Holiday Heights system is entitled to mandatory carriage on that system.²⁶ WCLF asserts that on August 23, 2002, it notified Mallard of its mandatory carriage election on Mallard's cable systems serving the Tampa-St. Petersburg-Sarasota DMA.²⁷ WCLF asserts further that it asked Mallard on two occasions to conduct signal strength tests on Holiday Heights headend, but that Mallard did not respond.²⁸ WCLF asks the Commission to order Mallard to commence carriage of the Station on the Holiday Heights system.²⁹

8. In its Opposition, Mallard maintains that WCLF is not entitled to mandatory carriage on its Holiday Heights system because the Station does not provide a good quality signal to that system's principal headend.³⁰ In support of these allegations, Mallard argues that its test of WCLF's signal conducted at the Holiday Heights headend on February 20, 2003, showed a reading of -43 dBmV (-91.75 dBm), which was below the required threshold for mandatory carriage, and therefore, WCLF is not entitled to must carry status.³¹

9. In reply, WCLF maintains that Mallard's February 20, 2003 signal strength measurements are not valid.³² In support of this contention, WCLF maintains that Mallard failed to use good engineering practices when it conducted its February 20th test because Mallard's survey results did not include, at a minimum, the specific make and model numbers of the equipment used, the age and most recent calibration date of the equipment used, description of the characteristics of the equipment, including antennas ranges and radiation patterns, a description of the methodology used for processing the Station's signal, the height of the antenna above ground level; orientation of the antenna, and the weather

²² Complaint at 2.

²³ *Id.* at 3-4.

²⁴ *Id.* at 1.

²⁵ *Id.* at n.1.

²⁶ *Id.*

²⁷ *Id.* at 2.

²⁸ *Id.* at 2 and Exhibit E.

²⁹ *Id.* at 4.

³⁰ Opposition at 1- 3.

³¹ *Id.* at Exhibit A.

³² Reply at 2.

conditions at the time of the test.³³ WCLF maintains that Mallard has not met its burden of showing that the Station's signal is inadequate for mandatory carriage purposes.³⁴

10. We agree with WCLF that in order to determine whether a certain level of signal is present, it is necessary that a cable operator submits a series of measurements, not just one as submitted by Mallard. As noted above, generally, if the test results are less than -55 dBm for a VHF station, we believe that at least four readings must be taken over a two hour period. In addition to the information required by our rules to be furnished to the affected station when there is a dispute over signal level measurements,³⁵ cable operators are expected to employ sound engineering measurement practices. As stated above, signal strength surveys should, at a minimum, include specific make and model numbers of the equipment used, as well as its age and most recent date(s) of calibration; description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; height of the antenna above ground level and whether the antenna was properly oriented; and weather conditions and time of day when the tests were conducted. Because Mallard did not comply with any of these requirements it has failed to establish that WCLF is not entitled to mandatory carriage on its Holiday Heights cable system.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the must carry complaint filed by Christian Television Network, Inc., licensee of television broadcast station WCLF-TV, Clearwater, Florida against Mallard Cablevision L.L.C. **IS GRANTED**.

12. **IT IS FURTHER ORDERED** that Mallard Cablevision, L.L.C. **SHALL COMMENCE CARRIAGE** of the WCLF signal on its Holiday Heights, Florida cable system within sixty (60) days from the date of this *Order*.

13. **IT IS FURTHER ORDERED**, that WCLF shall notify Mallard Cablevision, L.L.C. in writing of its channel position election on the Holiday Heights, Florida cable system within thirty (30) days of the release of this *Order*

14. **IT IS FURTHER ORDERED** that Mallard **SHALL RESUME CARRIAGE** of WCLF on its Ozello and Oak Forest cable systems within sixty (60) days from the date of the release of this *Order*.

³³ *Id.*; see *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Issues Clarification Order*, 8 FCC Rcd 4142, 4143 (1993) (“*Must Carry Clarification Order*”).

³⁴ Reply at 2-4.

³⁵ See Section 76.61 of the Commission's rules.

15. **IT IS FURTHER ORDERED**, that WCLF shall notify Mallard Cablevision, L.L.C. in writing of its channel position election on the Ozello and Oak Forest cable systems within thirty (30) days of the release of this *Order*.

16. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.³⁶

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

³⁶47 C.F.R. § 0.283.